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STATEMENT

OF THE

Royal Institution for the Advancement of Learning,

ADDRESSED TO THE

Benefactors and Friends of McGill University.



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1874.

STATEMENT

ADDRESSED BY THE MEMBERS OF THE

ROYAL INSTITUTION,

GOVERNORS OF MCGILL UNIVERSITY,

TO THE BENEFACTORS AND FRIENDS OF THE UNIVERSITY,

*With reference to the Conditional Lease to the Board of Arts and Manufactures created by the Provincial Statute, 20 Vic. C. 32, of 26 lots of land on St. Catherine St., and the termination of the Lease :
And also with reference to the sale of the same lots of land.*

In 1859 and '60, application was made to the Government of Canada for money aid to the McGill University, in order to enable it to carry on its work.

Pending the negotiations on this subject, arrangements were in progress by the Government for the reception of the Prince of Wales. It was desired on that occasion to prepare a large and creditable Exhibition of the Arts and Manufactures of Canada, and to make this Exhibition the foundation of an Institution which might be a permanent memorial of the visit of the Prince.

In connection with this object, it was proposed that the Royal Institution should lease to the Board of Arts and Manufactures, then existing under the Provincial Statute, 20 Vic., C. 32, a valuable lot of land on St. Catharine Street, containing 26 building lots, at a rental based upon a valuation very much less than could have been readily realized for it; and should also lend to the Board of Arts and Manufactures then existing, the sum of \$12,000, to aid in the erection of a building thereon for purposes of Practical Science and Art.

To this proposition the Royal Institution consented. It executed a Lease, at a yearly rental of \$1200, for special purposes connected with practical Science and Arts, expressed in the following precise terms:—"For the intents, uses and purposes mentioned, *and no other*, and for *so long* as the said parties (the lessees) shall observe, abide by and fulfil such terms and conditions, and carry out such intents, uses and purposes, *and no longer*."* Then followed certain stringent conditions and stipulations that, if not used for such purposes, or if the rent were not paid, the land with the buildings upon it should revert, *ipso facto*, to the Royal Institution. It also loaned the \$12,000, with which the Exhibition Building now on the ground was in part constructed.†

On the other hand, the Government lent to the Royal Institution the sum of \$40,000, and accepted as part security for payment of that sum an assignment of the \$12,000, due by the Board of Arts, the interest on which, with the yearly rent of \$1200 also assigned, was to be offset against the interest on the loan; the Government agreeing to collect these amounts out of the sums which might be voted by Parliament to the Board of Arts and Manufactures. But no Parliamentary appropriation was ever made for the payment of either of these sums.‡

The transfer and arrangement so made was accepted by the Board of Arts and Manufactures, which bound itself to the Government in accordance with its terms.¶

The advantages which the University expected to derive from this arrangement were:—

1st. The immediate use of a sum of money for the extension of its Educational work; and

2nd. The creation and use for the same purpose of a Museum, Art Gallery, Free Library, and Scientific Lectures, which the

* Lease and agreement, 4th August, 1860. See extract appended.

† Obligation and Hypotheque, 2nd October, 1860.

‡ Obligation by Royal Inst. to Her Majesty, 14th December, 1860.

¶ Ratification 23d January, 1861.

Board of Arts and Manufactures was constituted to establish, and which they bound themselves to carry on in the building erected on the property leased to them.

The Royal Institution faithfully performed its part of the agreement toward the Board of Arts and Manufactures, but that body failed to establish the Institutions above referred to, and was from pecuniary deficiencies unable in any degree to fulfil the purposes of the lease. In fact no sufficient money grant seems ever to have been made to that Corporation. It was left without means of any useful activity in the direction contemplated in the lease, and became deeply involved in debt.

The property, consequently, has been for many years past of no practical value to the University or to the public for the Educational purposes for which it was leased; but, on the contrary, was used for giving Public Concerts and Entertainments, and in the year 1861, or soon after, was taken possession of by the Government, (then holding the assignment of the \$12,000, and of the rent of \$1200, as stated above) and was used for the drilling of troops, and other military purposes, and for a variety of other uses inconsistent with the special purposes and limitation of the lease.

The Royal Institution would not have been justified in leasing the property of the University for the amount stipulated, nor would they have consented to the lease, but for the assurances of the Board of Arts and the Government that the Educational purposes for which it was granted would be carried out.

The absolute failure of the Board of Arts and Manufactures to carry out these purposes, and the violation of the conditions upon which the lease was granted, entitled the Royal Institution at any time to re-enter upon the land; and the building also became forfeit to it.

By the Quebec Statute, 32 V., c. 15, the Act 20, V., c. 32, constituting the first Board of Arts and Manufactures, was repealed and that Corporation ceased to exist.

Another Board of Arts and Manufactures was created by the former Statute, 32, V., c. 15, but was not in any manner, either directly or by implication, vested with the property, or made liable for

the debts of the former Board, and, thereupon, the property leased by the Royal Institution to the old Board of Arts and Manufactures, which had become extinct, would have reverted, if it had not long before done so, to the grantor (the Royal Institution).

No proceedings at law were necessary to declare the termination of the lease and right of re-entry by the Royal Institution : and, as matter of fact, when the old Board of Arts and Manufactures ceased to exist, there was no person or body of persons against whom proceedings could have been taken. At that time (when the first Corporation became extinct) the Dominion Government was in actual possession of the building for military purposes, for which it continued to hold and use it.

The members of the Royal Institution, who are also *ex officio* Governors of the University, were for years very uneasy at the condition of the land in question and the impossibility of making it available for educational purposes. There was a difficulty in dealing upon their legal rights with the Government, greater than would have been felt with a private individual. The old Board of Arts and Manufactures had become extinct. The Government was in the actual possession of the property and was the creditor of the Royal Institution for \$40,000, holding a mortgage for that amount upon all its property. No suit at law could be brought against the Government to get possession of the land, and there were no funds which could be spared for paying off the loan. The Royal Institution was, moreover, unwilling to press the matter with undue urgency, from the hope that, in consideration of the misuse of the land for so long a time, some compensation by way of damages, or, at least, an abatement of interest, would be allowed by the Government. At length, after the debt had been taken over by the Dominion Government as an asset, under the British North America Act, the Royal Institution felt it their duty to make a vigorous effort to regain possession of the property, and they accordingly sought to obtain from the Government a settlement of the whole matter by paying off the loan of \$40,000, and freeing the land of the Institution from mortgage; and after a good deal of negotiation and careful examination, an instrument for that object was executed between the Dominion Government and the Royal Institution on the 17th June, 1873. The Government discharged and released the Royal

Institution from its indebtedness for the sum of \$40,000, and retained in its possession the Exhibition Building, which it agreed to remove from the ground of the Royal Institution within seventy-five days from that date.

This arrangement made with the Government was much less favorable than the Royal Institution was entitled to expect. The claim for damages for the long exclusion from the possession of its property was denied, and for the balance of interest on the sum loaned, it was compelled to relinquish the Exhibition building, which undoubtedly belonged to it. Every penny of principal and interest due was paid upon this final arrangement.

The obligation to remove the building the Government failed for more than a year to carry out, and meanwhile, as it seemed by the connivance of its local officers, certain persons assuming to act as a Corporation, called "The Council of Arts and Manufactures," illegally entered into the building some time in the month of April or May last and occupied a portion of it, which they persisted in holding until recently ejected by the decided action of the Government. The grounds of the pretension of the parties by whom that aggression was committed are declared in an opinion of Counsel recently published by them, in which the following passages occur:—

"By the further Statute of Quebec, 36 Vic., Cap. 7, this new board of Arts and Manufactures was abolished and replaced by the present Council of Arts and Manufactures, a formal transfer being made by Sec. 8 of the Act of the property of the previous Board."

"This can scarcely be held to include the property of the first Board as constituted by the Statute 20 Vic., Cap. 32."

"There is here a painful discrepancy, leaving the present Council without express title to the property of the first Board, and with only such color of title as might be supposed to result from the substitution of the Board for Quebec in place of the one created by the Legislature of the Province of Canada. It might be fair, should this question arise, to ask the Government of Quebec to have the defect remedied by the Legislature, or in case that

"cannot be accomplished, to have said Government assert their title to the property in question, as if of a dissolved Corporation, as far as they might have the right to do so, as in the case of an expired charter under sections 179 and 180 of the Statutes of Quebec, 32 Vic. Cap. 15, so as to make the subject now under consideration a question between the two Governments."

"We fear there is but slight ground for interference in the way last mentioned, and yet if it could be managed it might have beneficial effect."

And again in answer to the 8th question: What action should the Council take to protect their rights? Answer. "We would recommend them to retain possession of the property and use it for the purposes for which it was leased to them—also to pay future *rente fonciere* as it falls due. In addition to this they should endeavor, as already suggested, to get an Act of the Quebec Legislature more distinctly recognizing them as the successors to the rights of the first Board of Arts and Manufactures, and if possible get the Quebec Government to take up their case and urge a fair settlement by treaty or correspondence with the Dominion Government."

It will be seen from these extracts that the action taken in the name of the Council of Arts and Manufactures was a mere speculative experiment, without any foundation in law or right,—an attempt at spoliation which the Governors of the University regard as anything but creditable to the parties engaged in it.

The deed of release and discharge from the Government to the Royal Institution was executed on the 17th June, 1873. Some time before that date (in the month of May,) an offer was made by Mr. Cramp to purchase the property. Two other offers had also been received still earlier. These offers, which were all that were sent in to the Board, were formally laid before the Governors at their Meeting on the 14th of May.

The first offer, considered as being the earliest in point of time, was that of Mr. Henry Hogan, of \$50,000; the second was that of Mr. Jesse Joseph; and the third, that of Mr. Cramp. These offers were made in letters addressed to the Board of Governors.

The offer of Mr. Joseph would have yielded \$52,402 for the property. That of Mr. Cramp gave \$76,099.

After communication with Mr. Hogan, as will be mentioned below, Mr. Cramp's offer was accepted.

His offer, it will be observed, is in his own name alone, and was so accepted. It was not then made known to the Board that he had associates. This fact, with the names of the gentlemen associated with him, was declared only on preparing the Deed of Sale. This sale has been made an occasion for charging the Governing Body of McGill University, with having made "*an underhand sale of its property to a number of gentlemen, for purposes of speculation, for some fifty per cent at least less than its real value.*" It has also been stigmatized as a "surreptitious" sale.

While the Governors do not admit that, in the discharge of the important trust committed to them, they are under any responsibility to defend their conduct against anonymous attacks, yet as it has always been their practice to treat the friends and benefactors of the University with confidence and frankness, they think it right to show the groundless nature of these accusations.

There are involved in the statements quoted two grave charges. The first is of fraudulent and corrupt conduct on the part of the Governors of the University; for the words "underhand" and "surreptitious" can mean nothing else. And the other is that the property of the University has been unjustifiably sacrificed. With respect to the former of these charges, it must be premised that the Royal Institution is empowered by law to sell by private or public sale, according to the discretion of the Governors, and that the mode of selling by private sale is that which has been usually followed.

The larger portion of the land of the University has been so disposed of; and it appears from a review of the list of sales, that the prices thus obtained have been more satisfactory than those obtained at public auction.

The last considerable property attempted to be disposed of by auction (the old Medical School) is a case in point. After decli-

ning a private offer, it was offered at auction, and the result was that a price considerably less than that previously tendered had to be accepted.

There was a special and conclusive reason why the sale in this instance should not be by auction. The Royal Institution had not the means of paying the \$28,000, required by the Government, before executing the deed of release, and until that deed was obtained, the property could not be put up at public sale. It was therefore made a condition of the acceptance of Mr. Cramp's offer that he should at once advance the required sum, not only before he received his own deed but before the Royal Institution had received the release from the Government. He consented to do so, and the money was paid over to the Government.

Events have since shown in a strong light the prudence of the course pursued, and that the exposure of the land to public sale would in all probability have resulted in failure to sell at all, or in the necessity of accepting a much lower rate; for the conspiracy which has recently become apparent to take away from the Institution its property, would most likely have found expression in casting doubts upon the title, under which capitalists would have declined to buy.

These statements are made to show that in the sale in question not only was there no departure from the course ordinarily followed, but that such course was rendered highly expedient by the particular circumstances of the case; there is, therefore, nothing in the fact of its being a private sale to justify suspicion. And the friends of the University will hardly expect its Governors to submit to the humiliation of declaring that they have not put money into their own pockets by the transaction, and have not robbed the Institution which they represent, for the sake of putting money into the pockets of speculators.

But to pass on to the other charge,—that the property *has been sold for at least fifty per cent less than its real value*. This assertion the Governors of the University declare without qualification to be untrue.

They maintain and are prepared to show, that the price received was the highest price which could have been obtained, and that

their acceptance of it by private contract was, in all respects, judicious.

An appeal to the personal knowledge of all land-agents and land-holders ought to be sufficient to settle the question, that at the time of sale the price of one dollar per superficial foot for land, the larger part of which was on Cathcart street and the remainder on St. Catherine, was a high rate. It was the full saleable value of the land on the latter street, and at least 100 per cent. above the market value of the land on the former street. As specific evidence of this, take first the offers received from the two gentlemen named, who are well known capitalists and well informed as to the value of real estate.

One of these, Mr. Henry Hogan, offered \$50,000. The other, Mr. Joseph, offered one dollar per foot for the land on St. Catherine street, and 45 cents for that on Cathcart street, amounting to \$52,402. After the offer by Mr. Cramp of a dollar a foot for the whole lot had been received, Mr. Hogan was informed of it by the Secretary of the Board, who was sent by the Governors for that purpose, and he was invited to advance on his offer up to the last moment before the decision. He positively refused to do so, saying that nothing could be made upon the purchase at that price. There is surely no evidence in these facts that the sale of the land was "underhand" or "surreptitious," or that a dollar per foot was under its value.

The truth is, that no land on St. Catherine street, it is believed, had been sold, at that time, for more than a dollar a foot, and none upon Cathcart street had reached the price of 50 cents. A sale took place, about that time, of a lot on Cathcart street of 52 ft. 7 in. by 124, making 6,500 superficial feet, with a good house upon it, by Mr. Bulmer, for a sum under \$6,000. The house could not be worth less than \$4,000, which would leave the value of the land at 31 cents a foot. The proprietor of the two lots on Catherine street, at the west corner of this block, to whom of all others the Cathcart street lots, in the rear of his property, were specially valuable, told the Secretary he would not give 50 cents a foot for them, and permits a personal reference to him if required.

Now put the Cathcart street lots at 50 cents, and the sale stands thus:—40,322 feet on Cathcart street, value \$20,161, at 50 cents per foot, and 35,778 feet on Catherine street for \$55,938, or about \$1.56 per foot.

The Governors have deemed it their duty to meet the intemperate and unwarrantable attack upon them, by submitting the foregoing statement to the Benefactors of the Institution and to those who feel a friendly interest in its prosperity, and they do so with perfect confidence. They have endeavored to administer its affairs, amid many difficulties and discouragements, prudently and faithfully; and its present condition, contrasted with its small beginnings, proves that their efforts have not been unsuccessful. Some of them have for more than 20 years given, in no stinted measure, their time and labor and influence to build up a great Educational Institution; and most of them have contributed, for the same end, large sums of money, which in the aggregate amount to not less than \$120,000.

It is left to the judgment of the friends of the Institution, and of all who are not swayed by motives of interest or hostility, whether it is likely that those who have been so long connected with, and have such substantial interest in it, will be less vigilant, or less faithful, in guarding it from loss and promoting its prosperity, than those whose concern in it has been shown chiefly in recent attacks, and in proceedings which if successful would injuriously affect its future welfare.

SIGNED:—

McGILL COLLEGE, 21st September, 1874.

CHARLES DEWEY DAY, *President of the Royal Institution and
Chancellor of McGill University.*

JAMES FERRIER,
ANDREW ROBERTSON.
CHRISTOPHER DUNKIN.
PETER REDPATH.
DAVID TORRANCE.
GEORGE MOFFATT.
JOHN H. R. MOLSON.
FREDERICK W. TORRANCE.
CHARLES J. BRYDGES.
ALEX. T. GALT.

*Members of the
Royal Institution,
Governors of McGill
University.*

By Order:—W. C. BAYNES,
Secretary Royal Institution.

APPENDIX.

Extracts from the Lease.

"The Royal Institution for the Advancement of Learning declared to have let and leased, and by these presents do let and lease and promise to procure peaceable enjoyment unto the said parties of the second part, the said Board of Arts and Manufactures for Lower Canada (created by the Provincial Statute, 20 Victoria, Chap. 32,) accepting thereof by their said Vice-President, upon the terms and conditions and to and for the intents, uses and purposes herein-after mentioned and no other, and for so long as the said parties of the second part shall observe, abide by and fulfil such terms and conditions and carry out such intents, uses and purposes and no longer, the several lots of land situated and being on St. Catherine street, Cathcart street, University street and McGill College avenue."

"The said lease having been so made subject to the conditions following, that is to say:—That the said lessees shall not transfer their right in the said lease, and that the building erected on the hereby-leased premises, and every other building or buildings which might at any time thereafter be erected on the said premises should be used by the said lessees of portions thereof, or their tenants or sub-lessees solely and exclusively for the purpose for which the said Board was constituted, or any kindred purposes connected with the promotion of practical science or the arts. It having been particularly agreed and understood that no such building erected on said premises, or any room, or rooms therein, should ever be used as a theatre, or as a tavern, saloon, or other like place of entertainment, or as a factory or workshop, and such building or buildings, room or rooms, should under no circumstances whatever be used or opened to the public on Sundays, and that whenever the said lessees or their successors constituting such Board of Arts and Manufactures for Lower Canada, should cease so to occupy and use the land thereby leased, and the building thereon erected for such special purposes, or should occupy or use them in whole or part, in contravention of any of the prohibitions aforesaid, or cause or suffer it so to be done by others, or should fail to pay the rent thereon, as thereinbefore specified, for the period of three years, the said land and all buildings and improvements thereon should thereupon revert to and become the absolute property of

the said the Royal Institution for the Advancement of Learning without any process at law or legal or other kind of formality whatsoever, and all right of occupation or use on the part of the said Board of Arts and Manufactures for Lower Canada, or of any other body or corporation, of the said land and buildings whether the rent hereby stipulated should have been redeemed or not, should thereupon *ipso facto* cease and determine to all intents and purposes as fully and effectually as if the present deed had never been executed."

"And it is hereby well understood and specially covenanted and agreed by and between the said parties hereto that nothing herein contained shall be held to be comminatory, but every clause and condition whatever herein set forth shall be *de rigueur* and shall be interpreted and acted upon as such, and as expressing the well understood intentions of the parties, and further that without this clause these presents would not have been made or entered into by either of said parties."

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